

S.1438

*One Hundred Seventh Congress
of the
United States of America
AT THE FIRST SESSION*

An Act

To authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Subtitle F--Rocky Flats National Wildlife Refuge

SEC. 3171. SHORT TITLE.

This subtitle may be cited as the 'Rocky Flats National Wildlife Refuge Act of 2001'.

SEC. 3172. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

- (1) The Federal Government, through the Atomic Energy Commission, acquired the Rocky Flats site in 1951 and began operations there in 1952. The site remains a Department of Energy facility. Since 1992, the mission of the Rocky Flats site has changed from the production of nuclear weapons components to cleanup and closure in a manner that is safe, environmentally and socially responsible, physically secure, and cost-effective.
- (2) The majority of the Rocky Flats site has generally remained undisturbed since its acquisition by the Federal Government.
- (3) The State of Colorado is experiencing increasing growth and development, especially in the metropolitan Denver Front Range area in the vicinity of the Rocky Flats site. That growth and development reduces the amount of open space and thereby diminishes for many metropolitan Denver communities the vistas of the striking Front Range mountain backdrop.
- (4) Some areas of the Rocky Flats site contain contamination and will require further response action. The national interest requires that the ongoing cleanup and closure of the entire site be completed safely, effectively, and without unnecessary delay and that the site thereafter be retained by the United States and managed so as to preserve the value of the site for open space and wildlife habitat.
- (5) The Rocky Flats site provides habitat for many wildlife species, including a number of threatened and endangered species, and is marked by the presence of rare xeric tallgrass prairie plant communities. Establishing the site as a unit of the National Wildlife Refuge System will promote the preservation and enhancement of those resources for present and future generations.

(b) PURPOSES- The purposes of this subtitle are--

- (1) to provide for the establishment of the Rocky Flats site as a national wildlife refuge following cleanup and closure of the site;
- (2) to create a process for public input on the management of the refuge referred to in paragraph (1) before transfer of administrative jurisdiction to the Secretary of the Interior; and
- (3) to ensure that the Rocky Flats site is thoroughly and completely cleaned up.

SEC. 3173. DEFINITIONS.

In this subtitle:

- (1) CERCLA- The term `CERCLA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).
- (2) CLEANUP AND CLOSURE- The term `cleanup and closure' means the response actions for covered substances carried out at Rocky Flats, as required by any of the following:
 - (A) The RFCA.
 - (B) CERCLA.
 - (C) RCRA.
 - (D) The Colorado Hazardous Waste Act, 25-15-101 to 25-15-327, Colorado Revised Statutes.
- (3) COVERED SUBSTANCE- The term `covered substance' means any of the following:
 - (A) Any hazardous substance, as such term is defined in paragraph (14) of section 101 of CERCLA (42 U.S.C. 9601).
 - (B) Any pollutant or contaminant, as such term is defined in paragraph (33) of such section 101.
 - (C) Any petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of such section 101.
- (4) RCRA- The term `RCRA' means the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), popularly known as the Resource Conservation and Recovery Act.
- (5) REFUGE- The term `refuge' means the Rocky Flats National Wildlife Refuge established under section 3177.
- (6) RESPONSE ACTION- The term `response action' means any of the following:
 - (A) A response, as such term is defined in paragraph (25) of section 101 of CERCLA (42 U.S.C. 9601).
 - (B) A corrective action under RCRA or under the Colorado Hazardous Waste Act, 25-15-101 to 25-15-327, Colorado Revised Statutes.
 - (C) Any requirement for institutional controls imposed by any of the laws referred to in subparagraph (A) or (B).
- (7) RFCA- The term `RFCA' means the Rocky Flats Cleanup Agreement, an intergovernmental agreement, dated July 19, 1996, among--
 - (A) the Department of Energy;
 - (B) the Environmental Protection Agency; and

(C) the Department of Public Health and Environment of the State of Colorado.

(8) ROCKY FLATS-

(A) IN GENERAL- Except as provided in subparagraph (B), the term `Rocky Flats' means the Rocky Flats Environmental Technology Site, Colorado, a defense nuclear facility, as depicted on the map titled `Rocky Flats Environmental Technology Site', dated October 22, 2001, and available for inspection in the appropriate offices of the United States Fish and Wildlife Service.

(B) EXCLUSIONS- The term `Rocky Flats' does not include--

(i) the land and facilities of the Department of Energy's National Renewable Energy Laboratory, including the acres retained by the Secretary under section 3174(f); and

(ii) any land and facilities not within the boundaries depicted on the map referred to in subparagraph (A).

(9) SECRETARY- The term `Secretary' means the Secretary of Energy.

SEC. 3174. FUTURE OWNERSHIP AND MANAGEMENT.

(a) FEDERAL OWNERSHIP- Except as expressly provided in this subtitle, all right, title, and interest of the United States, held on or acquired after the date of the enactment of this Act, to land or interest therein, including minerals, within the boundaries of Rocky Flats shall be retained by the United States.

(b) LINDSAY RANCH- The structures that comprise the former Lindsay Ranch homestead site in the Rock Creek Reserve area of the buffer zone, as depicted on the map referred to in section 3173(8)(A), shall be permanently preserved and maintained in accordance with the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(c) PROHIBITION ON ANNEXATION- Neither the Secretary nor the Secretary of the Interior shall allow the annexation of land within the refuge by any unit of local government.

(d) PROHIBITION ON THROUGH ROADS- Except as provided in subsection (e), no public road shall be constructed through Rocky Flats.

(e) TRANSPORTATION RIGHT-OF-WAY-

(1) IN GENERAL-

(A) AVAILABILITY OF LAND- On submission of an application meeting each of the conditions specified in paragraph (2), the Secretary, in consultation with the Secretary of the Interior, shall make available land along the eastern boundary of Rocky Flats for the sole purpose of transportation improvements along Indiana Street.

(B) BOUNDARIES- Land made available under this paragraph may not extend more than 300 feet from the west edge of the Indiana Street right-of-way, as that right-of-way exists as of the date of the enactment of this Act.

(C) EASEMENT OR SALE- Land may be made available under this paragraph by easement or sale to one or more appropriate entities.

(D) COMPLIANCE WITH APPLICABLE LAW- Any action under this paragraph shall be taken in compliance with applicable law.

(2) CONDITIONS- An application referred to in paragraph (1) meets the conditions specified in this paragraph if the application--

(A) is submitted by any county, city, or other political subdivision of the State of Colorado; and

(B) includes documentation demonstrating that the transportation improvements for which the land is to be made available--

(i) are carried out so as to minimize adverse effects on the management of Rocky Flats as a wildlife refuge; and

(ii) are included in the regional transportation plan of the metropolitan planning organization designated for the Denver metropolitan area under section 5303 of title 49, United States Code.

(f) WIND TECHNOLOGY EXPANSION AREA- The Secretary shall retain, for the use of the National Renewable Energy Laboratory, the approximately 25 acres identified on the map referred to in section 3173(8)(A) as the 'Wind Technology Expansion Area'.

SEC. 3175. TRANSFER OF MANAGEMENT RESPONSIBILITIES AND JURISDICTION OVER ROCKY FLATS.

(a) TRANSFER REQUIRED-

(1) IN GENERAL- Subject to the other provisions of this section, the Secretary shall transfer administrative jurisdiction over the property that is to comprise the refuge to the Secretary of the Interior.

(2) DATE OF TRANSFER- The transfer shall be carried out not earlier than the completion certification date, and not later than 30 business days after that date.

(3) COMPLETION CERTIFICATION DATE- For purposes of paragraph (2), the completion certification date is the date on which the Administrator of the Environmental Protection Agency certifies to the Secretary and to the Secretary of the Interior that cleanup and closure at Rocky Flats has been completed, except for the operation and maintenance associated with response actions, and that all response actions are operating properly and successfully.

(b) MEMORANDUM OF UNDERSTANDING-

(1) REQUIRED ELEMENTS- The transfer required by subsection (a) shall be carried out pursuant to a memorandum of understanding between the Secretary and the Secretary of the Interior. The memorandum of understanding shall--

(A) provide for the division of responsibilities between the Secretary and the Secretary of the Interior necessary to carry out such transfer;

(B) address the impacts that any property rights referred to in section 3179(a) may have on the management of the refuge, and provide strategies for resolving or mitigating these impacts;

(C) identify the land the administrative jurisdiction of which is to be transferred to the Secretary of the Interior; and

(D) specify the allocation of the Federal costs incurred at the refuge after the date of such transfer for any site investigations, response actions, and related activities for covered substances.

(2) PUBLICATION OF DRAFT- Not later than one year after the date of the enactment of this Act, the Secretary and the Secretary of the Interior shall publish in the Federal Register a draft of the memorandum of understanding.

(3) FINALIZATION AND IMPLEMENTATION-

(A) Not later than 18 months after the date of the enactment of this Act, the Secretary and Secretary of the Interior shall finalize and implement the memorandum of understanding.

(B) In finalizing the memorandum of understanding, the Secretary and Secretary of the Interior shall specifically identify the land the administrative jurisdiction of which is to be transferred to the Secretary of the Interior and provide for a determination of the exact acreage and legal description of such land by a survey mutually satisfactory to the Secretary and the Secretary of the Interior.

(c) TRANSFER OF IMPROVEMENTS- The transfer required by subsection (a) may include such buildings or other improvements as the Secretary of the Interior has requested in writing for purposes of managing the refuge.

(d) PROPERTY RETAINED FOR RESPONSE ACTIONS-

(1) IN GENERAL- The transfer required by subsection (a) shall not include, and the Secretary shall retain jurisdiction, authority, and control over, the following real property and facilities at Rocky Flats:

(A) Any engineered structure, including caps, barrier walls, and monitoring or treatment wells, to be used in carrying out a response action for covered substances.

(B) Any real property or facility to be used for any other purpose relating to a response action or any other action that is required to be carried out by the Secretary at Rocky Flats.

(2) CONSULTATION- The Secretary shall consult with the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the Governor of the State of Colorado on the identification of all real property and facilities to be retained under this subsection.

(e) COST- The transfer required by subsection (a) shall be completed without cost to the Secretary of the Interior.

(f) NO REDUCTION IN FUNDS- The transfer required by subsection (a), and the memorandum of understanding required by subsection (b), shall not result in any reduction in funds available to the Secretary for cleanup and closure of Rocky Flats.

SEC. 3176. ADMINISTRATION OF RETAINED PROPERTY; CONTINUATION OF CLEANUP AND CLOSURE.

(a) ADMINISTRATION OF RETAINED PROPERTY-

(1) IN GENERAL- In administering the property retained under section 3175(d), the Secretary shall consult with the Secretary of the Interior to minimize any conflict between--

(A) the administration by the Secretary of such property for a purpose relating to a response action; and

(B) the administration by the Secretary of the Interior of land the administrative jurisdiction of which is transferred under section 3175(a).

(2) PRIORITY IN CASE OF CONFLICT- In the case of any such conflict, the Secretary and the Secretary of the Interior shall ensure that the administration for a purpose relating to a response action, as described in paragraph (1)(A), shall take priority.

(3) ACCESS- The Secretary of the Interior shall provide to the Secretary such access and cooperation with respect to the refuge as the Secretary requires to carry out operation and maintenance, future response actions, natural resources restoration, or any other obligations.

(b) ONGOING CLEANUP AND CLOSURE-

(1) IN GENERAL- The Secretary shall carry out to completion cleanup and closure at Rocky Flats.

(2) CLEANUP LEVELS- The Secretary shall carry out such cleanup and closure to the levels established for soil, water, and other media, following a thorough review by the parties to the RFCA and the public (including the United States Fish and Wildlife Service and other interested government agencies) of the appropriateness of the interim levels in the RFCA.

(3) NO RESTRICTION ON USE OF NEW TECHNOLOGIES- Nothing in this subtitle, and no action taken under this subtitle, restricts the Secretary from using at Rocky Flats any new technology that may become available for remediation of contamination.

(c) OPPORTUNITY TO COMMENT- The Secretary of the Interior shall have the opportunity to comment with respect to any proposed response action as to the impacts, if any, of such proposed response action on the refuge.

(d) RULES OF CONSTRUCTION-

(1) NO RELIEF FROM OBLIGATIONS UNDER OTHER LAW- Nothing in this subtitle, and no action taken under this subtitle--

(A) relieves the Secretary, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, or any other person from any obligation or other liability with respect to Rocky Flats under the RFCA or any Federal or State law;

(B) impairs or alters any provision of the RFCA; or

(C) alters any authority of the Administrator of the Environmental Protection Agency under section 120(e) of CERCLA (42 U.S.C. 9620(e)), or any authority of the State of Colorado.

(2) CLEANUP LEVELS- Nothing in this subtitle shall reduce the level of cleanup and closure at Rocky Flats required under the RFCA or any Federal or State law.

(3) PAYMENT OF RESPONSE ACTION COSTS- Nothing in this subtitle affects the obligation of a Federal department or agency that had or has operations at Rocky Flats resulting in the release or threatened release of a covered substance to pay the costs of response actions carried out to abate the release of, or clean up, the covered substance.

SEC. 3177. ROCKY FLATS NATIONAL WILDLIFE REFUGE.

(a) IN GENERAL- On completion of the transfer required by section 3175(a), and subject to section 3176(a), the Secretary of the Interior shall commence administration of the real property comprising the refuge in accordance with this subtitle.

(b) ESTABLISHMENT OF REFUGE- Not later than 30 days after the transfer required by section 3175(a), the Secretary of the Interior shall establish at Rocky Flats a national wildlife refuge to be known as the Rocky Flats National Wildlife Refuge.

(c) COMPOSITION- The refuge shall be comprised of the property the administrative jurisdiction of which was transferred as required by section 3175(a).

(d) NOTICE- The Secretary of the Interior shall publish in the Federal Register a notice of the establishment of the refuge.

(e) ADMINISTRATION AND PURPOSES-

(1) IN GENERAL- The Secretary of the Interior shall manage the refuge in accordance with applicable law, including this subtitle, the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), and the purposes specified in that Act.

(2) REFUGE PURPOSES- The refuge shall be managed for the purposes of--

(A) restoring and preserving native ecosystems;

(B) providing habitat for, and population management of, native plants and migratory and resident wildlife;

(C) conserving threatened and endangered species (including species that are candidates for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)); and

(D) providing opportunities for compatible scientific research.

(3) MANAGEMENT- In managing the refuge, the Secretary of the Interior shall--

(A) ensure that wildlife-dependent recreation and environmental education and interpretation are the priority public uses of the refuge; and

(B) comply with all response actions.

SEC. 3178. COMPREHENSIVE PLANNING PROCESS.

(a) IN GENERAL- Not later than 180 days after the date of the enactment of this Act, in developing a comprehensive conservation plan for the refuge in accordance with section 4(e) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(e)), the Secretary of the Interior shall establish a comprehensive planning process that involves the public and local communities. The Secretary of the Interior shall establish such process in consultation with the Secretary, the members of the Coalition, the Governor of the State of Colorado, and the Federal and State of Colorado officials who have been designated as trustees for Rocky Flats under section 107(f)(2) of CERCLA (42 U.S.C. 9607(f)(2)).

(b) OTHER PARTICIPANTS- In addition to the entities specified in subsection (a), the comprehensive planning process required by subsection (a) shall include the opportunity for direct involvement of entities that are not members of the Coalition as of the date of the enactment of this Act, including the Rocky Flats Citizens' Advisory Board and the cities of Thornton, Northglenn, Golden, Louisville, and Lafayette, Colorado.

(c) DISSOLUTION OF COALITION- If the Coalition dissolves, or if any Coalition member elects to leave the Coalition during the comprehensive planning process required by subsection (a)--

(1) such comprehensive planning process shall continue; and

(2) an opportunity shall be provided to each entity that is a member of the Coalition as of September 1, 2000, for direct involvement in such comprehensive planning process.

(d) CONTENTS- In addition to the requirements of section 4(e) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(e)), the comprehensive conservation plan referred to in subsection (a) shall address and make recommendations on the following:

(1) The identification of any land referred to in subsection (e) of section 3174 that could be made available under that subsection.

(2) The characteristics and configuration of any perimeter fencing that may be appropriate or compatible for cleanup and closure purposes, refuge purposes, or other purposes.

(3) The feasibility of locating, and the potential location for, a visitor and education center at the refuge.

(4) Any other issues relating to Rocky Flats.

(e) COALITION DEFINED- In this section, the term 'Coalition' means the Rocky Flats Coalition of Local Governments established by the Intergovernmental Agreement, dated February 16, 1999, among--

(1) the city of Arvada, Colorado;

(2) the city of Boulder, Colorado;

(3) the city of Broomfield, Colorado;

(4) the city of Westminster, Colorado;

(5) the town of Superior, Colorado;

(6) Boulder County, Colorado; and

(7) Jefferson County, Colorado.

(f) REPORT- Not later than three years after the date of the enactment of this Act, the Secretary of the Interior shall submit to Congress--

(1) the comprehensive conservation plan referred to in subsection (a); and

(2) a report that contains--

(A) an outline of the involvement of the public and local communities in the comprehensive planning process, as required by subsection (a);

(B) to the extent that any input or recommendation from the comprehensive planning process is not accepted, a clear statement of the reasons why such input or recommendation is not accepted; and

(C) a discussion of the impacts of any property rights referred to in section 3179(a) on management of the refuge, and an identification of strategies for resolving and mitigating these impacts.

SEC. 3179. PROPERTY RIGHTS.

(a) IN GENERAL- Except as provided in subsections (c) and (d), nothing in this subtitle limits any valid, existing property right at Rocky Flats that is owned by any person or entity, including, but not limited to--

(1) any mineral right;

(2) any water right or related easement; and

(3) any facility or right-of-way for a utility.

(b) ACCESS- Except as provided in subsection (c), nothing in this subtitle affects any right of an owner of a property right referred to in subsection (a) to access the owner's property.

(c) REASONABLE CONDITIONS-

(1) IN GENERAL- The Secretary or the Secretary of the Interior may impose such reasonable conditions on access to property rights referred to in subsection (a) as are appropriate for the cleanup and closure of Rocky Flats and for the management of the refuge.

(2) NO EFFECT ON OTHER LAW- Nothing in this subtitle affects any Federal, State, or local law (including any regulation) relating to the use, development, and management of property rights referred to in subsection (a).

(3) NO EFFECT ON ACCESS RIGHTS- Nothing in this subsection precludes the exercise of any access right, in existence on the date of the enactment of this Act, that is necessary to perfect or maintain a water right in existence on that date.

(d) UTILITY EXTENSION-

(1) IN GENERAL- The Secretary or the Secretary of the Interior may allow not more than one extension from an existing utility right-of-way on Rocky Flats, if necessary.

(2) CONDITIONS- An extension under paragraph (1) shall be subject to the conditions specified in subsection (c).

(e) EASEMENT SURVEYS- Subject to subsection (c), until the date that is 180 days after the date of the enactment of this Act, an entity that possesses a decreed water right or prescriptive easement relating to land at Rocky Flats may carry out such surveys at Rocky Flats as the entity determines are necessary to perfect the right or easement.

SEC. 3180. LIABILITIES AND OTHER OBLIGATIONS.

(a) IN GENERAL- Nothing in this subtitle shall relieve, and no action may be taken under this subtitle to relieve, the Secretary, the Secretary of the Interior, or any other person from any liability or other obligation at Rocky Flats under CERCLA, RCRA, or any other Federal or State law.

(b) COST RECOVERY, CONTRIBUTION, AND OTHER ACTION- Nothing in this subtitle is intended to prevent the United States from bringing a cost recovery, contribution, or other action that would otherwise be available under Federal or State law.

SEC. 3181. ROCKY FLATS MUSEUM.

(a) MUSEUM- To commemorate the contribution that Rocky Flats and its worker force provided to winning the Cold War and the impact that such contribution has had on the nearby communities and the State of Colorado, the Secretary may establish a Rocky Flats Museum.

(b) LOCATION- The Rocky Flats Museum shall be located in the city of Arvada, Colorado, unless, after consultation under subsection (c), the Secretary determines otherwise.

(c) CONSULTATION- The Secretary shall consult with the city of Arvada, other local communities, and the Colorado State Historical Society on--

(1) the development of the museum;

(2) the siting of the museum; and

(3) any other issues relating to the development and construction of the museum.

(d) REPORT- Not later than three years after the date of the enactment of this Act, the Secretary, in coordination with the city of Arvada, shall submit to Congress a report on the costs associated with the construction of the museum and any other issues relating to the development and construction of the museum.

SEC. 3182. ANNUAL REPORT ON FUNDING.

For each of fiscal years 2003 through 2007, at the time of submission of the budget of the President under section 1105(a) of title 31, United States Code, for such fiscal year, the Secretary and the Secretary of the Interior shall jointly submit to Congress a report on the costs of implementation of this subtitle. The report shall include--

- (1) the costs incurred by each Secretary in implementing this subtitle during the preceding fiscal year; and
- (2) the funds required by each Secretary to implement this subtitle during the current and subsequent fiscal years.